

1 anything concerning your conversation with Mr. Berfield
2 regarding this invoice?

3 JUDGE CHACHKIN: First of all, did you prepare this
4 invoice?

5 WITNESS: Yes, sir

6 JUDGE CHACHKIN: All right. That hasn't been
7 established.

8 MR. HOLT: Thank you, Your Honor.

9 WITNESS: I got diverted from the Judge's question,
10 would you ask me the question again, Mr. Holt?

11 BY MR. HOLT:

12 Q Yes, I will. And it was poorly phrased, I'm sorry.
13 What, if anything, do you recall discussing with Mr. Berfield
14 about this invoice?

15 A All that I can recall, Mr. Holt, is that Mort talked
16 to me about the invoice. I cannot recall more than that.
17 Again, it occurred too long ago.

18 Q Did your conversation, during the course of your
19 conversation with Mr. Berfield, did he refer you to the time
20 diaries that are attached to the invoice, at pages 9, 10 and
21 11, TBF Exhibit 292?

22 A I cannot recall.

23 Q Do you recall having any conversation with Mr.
24 Berfield regarding services that had been rendered to Raystay
25 by John Schauble prior to the preparation of this invoice

1 | dated June 4, 1990?

2 | A I cannot recall.

3 | Q Do you recall having any conversation with Mr.
4 | Berfield regarding any of the services that had been rendered
5 | by Mr. Boyce prior to, to Raystay, prior to the preparation of
6 | this June 4, 1990 invoices, which services, I might add, are
7 | reflected in the face of this invoice?

8 | A I've searched my recollection and I cannot recall.
9 | It's simply too long ago.

10 | Q If you turn to page 12 of TBF Exhibit 292, its an
11 | invoice dated August 7, 1990. Was this invoice prepared by
12 | you?

13 | A It was.

14 | Q I take it you have no recollection of discussing
15 | this invoice with Mr. Berfield at any time?

16 | A No, that's not correct. I recall that Mort talked
17 | to me about Raystay bills that I had prepared. And this was a
18 | bill that I prepared. That I, that I have a good recollection
19 | about. But I don't remember what the substance of the
20 | conversation was but I do remember that he wanted, he said he
21 | wanted to go over, talk to me about, discuss whatever, Raystay
22 | bills.

23 | Q Where did this conversation occur?

24 | A In our office.

25 | Q In your office or his?

1 A I cannot recall that.

2 Q Was anyone present during the conversation?

3 A I have no recollection of anyone being present other
4 than Mort and myself.

5 Q If I could direct your attention to page 15 of TBF
6 Exhibit 292. Now this is an invoice dated March 9, 1990, I'm
7 sorry, November 9, 1990.

8 A Yes.

9 Q And, if I'm not mistaken the construction permits
10 were granted on July 24, 1990.

11 A That's what I'm advised.

12 Q And, you'll see here that there are various entries
13 which reference compliance program for LPTF station. And my
14 question to you is what, if anything, did you discuss with Mr.
15 Berfield regarding this invoice as it relates to the
16 compliance program?

17 A My answer is the same, that I cannot recall what
18 Mort talked to me about but I remember talking to him about
19 the bill, but that's all I can say and I have tried as hard as
20 I could to search my recollection to remember?

21 Q Do you have any recollection of discussing with Mr.
22 Berfield the compliance program as it related to the LPTV
23 station after the grant of the construction permits for
24 Lebanon, Lancaster and Red Lion?

25 A Can I hear the question again?

1 Q Do you have recall having any discussion with Mr.
2 Berfield regarding this invoice as it related to the
3 compliance program concerning the low power construction
4 permits for Lebanon, Lancaster or Red Lion?

5 A I have no specific recollection of Mort talking to
6 me about the compliance program.

7 Q Do you have a general recollection of discussing --

8 A I have no general recollection.

9 Q The invoice, the first entry of the invoice refers
10 to the preparation of a letter dated August 8 concerning the
11 compliance program. Do you have any recollection of
12 discussing at any time with Mort Berfield during this period,
13 when this conversation occurred. That was poorly phrased, let
14 me withdraw it. During the period in which this conversation
15 occurred, either before or after, do you have any recollection
16 of discussing with Mr. Berfield the letter referenced in the
17 first entry on the November 9, 1990 invoice?

18 MR. BECHTEL: If it pleases the Court, I'm very
19 patient, but I really think that this one has been asked and
20 answered and the record is clear back at that time period,
21 that this witness's recall of all of these little variations
22 of the questions and I, so I object to the question as
23 cumulative, asked and answered and wasting our time.

24 JUDGE CHACHKIN: Do you have any response?

25 MR. HOLT: Well, Your Honor --

1 JUDGE CHACHKIN: Well, I'll, just to cut it short,
2 I'll let you ask the question one more time concerning any
3 conversation concerning the specific subject of compliance.

4 MR. HOLT: Okay, let me --

5 JUDGE CHACHKIN: And that'll be it.

6 BY MR. HOLT:

7 Q Mr. Berfield, I mean, Mr. Cohen,

8 A Yes, sir.

9 Q During this period of time --

10 A This period of time refers to what?

11 Q The period of time in which you say this
12 conversation occurred.

13 A Well, I didn't say it occurred in any period of
14 time. I can't recall the period of time. I told you that,
15 Mr. Holt.

16 Q Well --

17 JUDGE CHACHKIN: Why don't you just ask him a
18 general question -- discuss with Mr. Berfield the subject of
19 compliance?

20 BY MR. HOLT:

21 Q Do you, do you, do you, do you, do you recall
22 confirming, did you confirm to Mr. Berfield, at any time, that
23 the compliance program, as it related to the low power
24 construction permits for Red Lion, Lancaster or Lebanon was an
25 aspect of construction, constructing or operating those

1 stations?

2 A I don't understand your question.

3 Q Well, did you, do you recall confirming to Mr.
4 Berfield, at any time, that the compliance program, reflected
5 in this November 9, 1990 letter, was related to the
6 construction or operation of the low power construction permit
7 for Lebanon, Lancaster or Red Lion?

8 MR. BECHTEL: I object. I don't understand the
9 question at all. And to the extent it's unlimited as to time,
10 it's irrelevant.

11 JUDGE CHACHKIN: Well, again it also refers to the
12 substance of these conversations since she brought in the
13 bills. And the witness has testified he can't recall the
14 substance of any conversation concerning these bills only the
15 fact that he did have the conversation.

16 MR. HOLT: Your Honor, I'm trying to, to remove it
17 from just this simple this conversation that, regarding the
18 bills to any conversation at all in which the witness
19 confirmed to Mr. Berfield that the development or
20 implementation of the compliance program was a component of
21 constructing or operating the low power television stations
22 for Lancaster, Red Lion and Lebanon.

23 JUDGE CHACHKIN: Well, you'll have to ask him
24 without reference to the bill. There's a date listed here,
25 perhaps you want to use that as part of your question.

1 MR. HOLT: Okay.

2 BY MR. HOLT:

3 Q Mr. Cohen, do you recall discussing with Mr.
4 Berfield at any time the question of whether or not the
5 compliance program for the LPTV station was relevant to the
6 construction or operation of the low power, unbuilt low power
7 construction permits for Lebanon, Lancaster or Red Lion?

8 A Well, I have a hard time understanding your question
9 and maybe it's my problem but I have a hard time, I just don't
10 understand your question. Maybe you need to give me several
11 questions, but I just, I don't know how to answer your
12 question, I don't understand it.

13 Q Well, you, you were extensively involved in the
14 development of the compliance program, correct?

15 A I was involved, but I wasn't, I was, I was, I had a
16 colleague in it, involved in it who, John Schauble, and he and
17 I were together in this, in this project.

18 Q But you played a major function in the development
19 of the compliance program, correct?

20 A Well I don't want to quibble with you, but I think
21 probably John played more of a, of a function in devising it
22 than I but it was a joint, it was a joint effort. But
23 probably he devoted more time to it than I did.

24 Q Mr. Berfield was not involved in any --

25 A He was not involved.

1 Q Do you recall confirming to Mr. Berfield, at any
2 time, that the compliance program related to the construction
3 or operation of the low power television stations for Lebanon,
4 Lancaster or Red Lion.

5 A The word confirming suggests that Mort asked me a
6 question and I said yes, that's true. And, I've already told
7 several times, Mr. Holt that I don't have a recollection --

8 Q I'm sorry.

9 A -- about the, about the conversations concerning
10 this bill. And so, when you say, did I confirm it, that
11 presupposes that I recall what Mort said to me and that I said
12 either yes or no. And I can't in truth, and I want to be
13 truthful, I can't in truth answer that.

14 Q I understand. It was a poorly phrased question and
15 I shouldn't have used the word confirm and the question is, do
16 you recall telling Mr. Berfield, at any time, and I don't want
17 to just relate this to your conversation regarding the bill.
18 But I'm asking you, do you recall telling Mr. Berfield, at any
19 time, that the compliance program, related to the construction
20 or operation of the low power television stations for Lebanon,
21 Lancaster or Red Lion --

22 A Well, now, when you say at any time, now, are you
23 talking about up to today. Because once this case was, this
24 issue was added, you know, we've had discussions in the
25 office, etc., etc. Now, what do you, what do you --

1 Q Prior to the addition of the issue. Point well
2 taken.

3 A I have no recollection of the subject discussion
4 with Mort prior to the time that Judge Chachkin enlarged the
5 issues.

6 Q I'd like for you to direct your attention to Mr.
7 Berfield's testimony at paragraph 7.

8 A Where would I find that?

9 Q You would find that in the volume of testimony
10 introduced by Glendale 224.

11 A Exhibit 224?

12 Q Correct.

13 A Yeah, I've never, I, I only looked at this once and
14 I have no recollection of this testimony, so I, I have to --

15 MR. SCHAUBLE: Perhaps the witness been directed --

16 WITNESS: I'm looking in the wrong place.

17 JUDGE CHACHKIN: Go ahead.

18 WITNESS: I'm not very familiar with this, Your
19 Honor.

20 MR. SCHAUBLE: Paragraph 7, page 4. Is that it?

21 MR. HOLT: Paragraph 7, yes.

22 WITNESS: You want me to read paragraph 7?

23 MR. HOLT: If you would take a moment to review that
24 paragraph.

25 WITNESS: Should I read it to myself?

1 JUDGE CHACHKIN: Yes, read it to yourself.

2 MR. HOLT: Yes.

3 WITNESS: I've read it.

4 MR. HOLT: Now, the paragraphs indicates that Mr.
5 Berfield included in his calculation of legal fees, reflected
6 in his November 7 letter, a portion of the legal fees that
7 have been generated in connection with establishment of the
8 compliance program concerning Raystay's low power television
9 station. Is that a fair representation of his testimony?

10 MR. BECHTEL: Objection.

11 WITNESS: It speaks for itself. I mean, whatever it
12 says, it says.

13 MR. BECHTEL: That's my objection, it speaks for
14 itself.

15 BY MR. HOLT:

16 Q Mr. Berfield explains in this paragraph that he did
17 this because the compliance program related other steps neces,
18 reasonably necessary for placing the stations in operation.

19 A Where are you reading?

20 Q From the first, paragraph 7, beginning with the,
21 let's see. I think about the seventh line. "It was my
22 opinion that the compliance program --"

23 A Let me find it. Oh, I, "It was my opinion --",
24 that's what?

25 Q Um-hm.

1 A Okay. That's where you're reading from?

2 Q That through the next sentence.

3 A Well, let me read it to myself first. I should read
4 from beginning, it to where?

5 Q To the citation to 47CFR.

6 A And point 7, 74.780? Through there?

7 Q Yes.

8 A Is that where I should read?

9 Q Yes.

10 A All right. Let me read it. I've read it.

11 Q Do you recall discussing, at any time, with Mr.
12 Berfield the question of whether or not the compliance program
13 or expenses incurred by the construction permits relative to
14 placing the stations in operation?

15 MR. BECHTEL: Now, before you answer, I would like
16 to, with the Court's permission, ask counsel the relevance of
17 his line of questioning, of that particular question. And I
18 will object to it as irreverent until I hear a statement of
19 purpose.

20 JUDGE CHACHKIN: There's been an objection on the
21 ground of relevancy. How is it?

22 MR. HOLT: Your Honor, there's been quite a bit of
23 testimony in this area from other witnesses in the proceedings
24 and I'm trying to assess the credibility of that testimony
25 concerning the compliance program and its relation to the low

1 power construction permits.

2 MR. BECHTEL: Now, I do have a lot of --

3 JUDGE CHACHKIN: Go ahead.

4 MR. BECHTEL: First of all, in the witness
5 notification, the Trinity folks said as to Lewis I. Cohen.
6 "Mr. Berfield's partner as C&B was the attorney who prepared
7 the certification of expenses at issue in this proceeding."
8 They said nothing about examination of and what in effect was
9 a allocation process done by his partner. If you want to get
10 to Mr. Cohen's ability to, to testify concerning this
11 allocation process, it is necessary for you to, for, for
12 Trinity to establish a foundation, a factual foundation, that
13 he was part of the process, he participated in the process and
14 he's testifying about his own, the things he did and the
15 things he understands and why he did it.

16 If they want him to be an expert witness, and I, I assume
17 he could certainly have been qualified for an expert witness
18 in some other case where he didn't have any personal
19 relationship to the case, then there's a procedure for that.
20 And the procedure is to designate him as an expert witness so
21 that he can study all of the relevant facts, perhaps prepare a
22 hypothetical presentation of the facts for his answer, do
23 whatever research he wants to in the law and then stand ready
24 as an independent witness to give such testimony. No such
25 foundations have been --

1 JUDGE CHACHKIN: I think you're missing the point to
2 this. The testimony of Mr. Cohen was that Mr. Berfield did
3 not participate in the compliance program. Now I assume what
4 the argument is here is if he didn't participate in the
5 compliance program, then how did he justifiably, what
6 knowledge did he have that justified him to include a portion
7 of it in his allocation. I assume that's what being --

8 MR. BECHTEL: Well, that wasn't the question or the,
9 or the --

10 JUDGE CHACHKIN: That's exactly the question. That
11 that's the assumption here and I don't think it's been
12 established that the fact that Mr. Berfield did not personally
13 participate in the compliance program didn't mean that he
14 didn't know about the existence of the program and the purpose
15 of the program. And that's the assumption that TBF has
16 reached based on Mr. Cohen's one testimony that there, he and
17 Mr. Schauble, were the ones who were instrumental in setting
18 up the compliance. So I think it has nothing to do with
19 expert witnesses or anything like that.

20 MR. BECHTEL: Well, if it's, if it's --

21 JUDGE CHACHKIN: Let's get going on this.

22 MR. BECHTEL: Okay.

23 WITNESS: Could I have the question read back, Your
24 Honor, or can I hear the question again because I lost --

25 JUDGE CHACHKIN: But I'm saying, I don't think a

1 foundation has been laid that the fact that the, Mr. Berfield
2 did not participate in it doesn't mean that he didn't know
3 anything about it from which to form a conclusion than an
4 allocation was possible. I mean, I don't think that has been
5 established. That foundation. But I assume that's where
6 we're going on the basis of Mr. Cohen's response that --

7 MR. BECHTEL: If we're going to the foundation, the
8 facts on the foundation, I have no objection to that.

9 MR. HOLT: Thank you. Your Honor.

10 BY MR. HOLT:

11 Q Mr. Cohen, do you recall discussing with Mr.
12 Berfield, at any time, the question of whether or not legal
13 services that were rendered, or legal fees that were
14 generated, in connection with the development of the
15 compliance program, could be properly allocated to the, any of
16 the construction permits under the theory that they were steps
17 reasonably necessary towards placing the station in operation?

18 A Could I hear the question again?

19 Q Perhaps the court reporter can play it back.

20 (Whereupon, a portion of the record was played back)

21 A I simply have no recollection. I cannot recall.

22 Q Based on your familiarity with the compliance
23 program, do you think it was proper for Mr. Berfield to have
24 included fees relating to the compliance program in his
25 expense calculations with respect to the low power

1 construction permits?

2 MR. BECHTEL: Now, everything I said in the -- is to
3 say, there's been no factual foundation that as a fact
4 witness, he participated in the process so that he made that
5 judgment at the time and can support his judgment and he has
6 not been established as a, he has not been properly notified
7 and prepared as an expert witness.

8 JUDGE CHACHKIN: He doesn't have to be an expert
9 witness. He participated in the compliance program. An
10 allocation was made. He has the facts. He could say whether
11 he feels it was justified to, based on his knowledge of the
12 compliance program, whether it was justified to include that
13 in the, to allocate a certain portion of that, of the
14 compliance program to the costs of, of, of the CP.

15 WITNESS: Could I hear the question back?

16 BY MR. HOLT:

17 Q The question is, I'm going to, I'm going to narrow
18 the focus of the question, make it easier for you.

19 A I need all the help I can get, Mr. Holt, thank you
20 very much.

21 Q Happy to give it to you. The construction permits
22 were granted on July 24, 1990. Services were rendered after
23 that date in order to establish the compliance program with
24 respect to TV40 and testimony has been with respect to the
25 construction permits as well. My question for you is, bearing

1 in mind the grant date of July 24, 1990, did you, do you have
2 any opinion, do you believe it was proper for Mr. Berfield to
3 allocate fees that generated in connection with the
4 establishment of the compliance program after the construction
5 permits had been granted when he was making his expense
6 allocations for the unbuilt construction permits for
7 Lancaster, Lebanon and Red Lion?

8 A Well, I think it would be certainly appropriate.

9 Q And why do you have that opinion?

10 A Because I don't have the bill in front of me, but
11 when I reviewed this, it seemed to me that in some instances
12 the services, the bill may not have been sent until after the
13 con--, after the construction permits were granted but I
14 notice some of the services were rendered prior to that time.
15 That's one answer.

16 Q Which bill are you referring to? Why don't you take
17 29, TBF Exhibit 292.

18 A I have to, let me get the bills out again. There
19 was a bill rendered, I'm informed after November 7, was that
20 the date?

21 Q We're talking about the bill of November 9.

22 A November 9.

23 Q Right.

24 A Let me find it.

25 JUDGE CHACHKIN: Page 15.

1 WITNESS: Thank you, Your Honor. Now, the
2 construction permits on the form were granted when, Mr. Holt?

3 MR. HOLT: July 24, 1990.

4 WITNESS: Well, looking at the November 9 invoice,
5 there is a preparation of letter dated August 8. Now, it's my
6 sense that at least some of the services concerning that
7 preparation of that letter occurred prior to July 24. And I
8 would answer, it's my sense that that would be the same for
9 item 2 and item 3 and item 4.

10 BY MR. HOLT:

11 Q Let me rephrase.

12 A I'm not, I mean that's just my, my sense, I should
13 say.

14 Q Okay. Let me, let me rephrase you the time records
15 that are attached to this invoice.

16 A Okay.

17 Q That reflect John Schauble's billing of August, 1990
18 and then of September, 1990 and again October, 1990.

19 A I'm, I see that. But that doesn't mean that there
20 were no services rendered prior to August. Excuse me, there
21 was no, there was no time spent on this project prior to
22 August. Many times we have a practice in our firm where work
23 carries over and where, where we don't write it all down as it
24 occurs but carry it over. I don't know. John Schauble's the
25 only one that can answer that question. But my sense is that,

1 that some of this work, at least occurred prior to July 24.

2 Q Is there any way to determine from the face of the
3 time records attached to this invoice whether any of those
4 services occurred prior to July 24?

5 A I don't think there is. I think John Schauble is
6 the only person to answer that question. But that's my sense.

7 Q Okay. With respect to those services rendered after
8 July 24, 1990, that relate to the compliance program, was it
9 proper for Mr. Berfield to include in his expense calculations
10 for the low power construction permits a portion of those
11 services?

12 A I believe so. I think it would be entirely
13 appropriate.

14 Q What's the basis for that belief?

15 A Well, Mr. Holt, in my view, and I suspect you don't
16 agree with this, in my view, you have to look upon this as all
17 these service are on a continuance. That is, the, from the
18 time that the project was conceived to the time that the
19 certificate of compliance were, were, were executed, it's one
20 continue. And, there was a representation made to the
21 Commission at the outset that there was going to be a
22 compliance program. And part of that compliance program was a
23 certificate of compliance. So all that the, the November 9,
24 compliance certification does is implement what was said at
25 the outset. So, I mean, I think it's one ball of wax.

1 Q Well, to your knowledge was it implemented with
2 respect to the low power construction permits for Lebanon,
3 Lancaster and Red Lion? Or was it implemented with respect to
4 TV40?

5 A Well, obviously, it couldn't have been implemented
6 to the construction permits since they were construction
7 permits. But that's beside the point. The point is that
8 representation was made to the Commission in order to obtain a
9 grant of the construction permits, if there was going to be a
10 compliance program. It just so happens that TV40 was out
11 there and so it became the object of the compliance program.
12 But that was, was, was ancillary, or secondary, or it just
13 happened to be. And as I said to you earlier, had there been
14 no compliance program, then, had there been no application for
15 construction permits, then there would never have been a
16 compliance program.

17 Q So you're saying that in establishing the compliance
18 program, which was implemented for TV40, that was a component
19 of, that was a step toward placing the unbuilt construction
20 permits in operation?

21 A That's not what I said. And if I, if I, if I had
22 said that, I didn't mean to say that.

23 Q Do you, well do you agree with Mr. Berfield's
24 characterization of, of those services as being necessary to
25 place the stations in operation?

1 A I've already, I've already forgotten what Mort said
2 so I'll have to read it again.

3 Q Paragraph 7.

4 A Where do I start to read?

5 Q Paragraph 7 of Exhibit 224. It's at, I'm sorry,
6 page 4.

7 A And where should I begin to read? "It was my
8 opinion --"? Are those --

9 Q You can start with, "I included a portion --", it's
10 the third line, "I included a portion of the initial
11 establishment and implementation of such a program in the
12 construction permit fees." And then read, read on down --

13 A Yes?

14 Q Through --

15 A Where should, I should start with, "I include --"
16 and I should read through where?

17 Q Through the end of the citation, 47CFR, the end of
18 that sentence.

19 A Let me, if you'll give me a minute.

20 MR. BECHTEL: What the hell, read to the end of the
21 paragraph.

22 WITNESS: Read to the end of the paragraph. Okay,
23 I'll read anything I'm told to read. I agree with Mort.

24 BY MR. HOLT:

25 Q You agree with Mort?

1 A You're not surprised to hear that, are you?

2 Q It's also your opinion that legal services that were
3 rendered after the grant of the construction permits, with
4 respect to establishing the compliance program, were a
5 necessary step toward placing the stations, the unbuilt
6 stations, in operation?

7 A I agree with what Mort said in that paragraph. And
8 I'm not sure he said it exactly the way you just put it, but
9 I, I agree with what Mort said and his language speaks for
10 itself. So I'd rather agree with that than agree with what
11 you just said. If it's okay with you.

12 Q Let me request that a document be marked for
13 identification as TBF Exhibit 294. And it's a twenty-one page
14 document consisting of a letter dated August 8, 1990 on the
15 letterhead of Cohen and Berfield, signed by Lewis I. Cohen and
16 directed to George F. Gardner. My colleague, Mr. Topel, will
17 be distributing copies to the party. Mr. Cohen, do you have a
18 copy of the letter now before you?

19 A What letter should I be looking at? August 8? The
20 letter dated August 8?

21 Q Mr., I'm sorry, Mr., Your Honor, I neglect, I cut
22 you off there.

23 JUDGE CHACHKIN: All right. The document described
24 by counsel is marked for identification as TBF Exhibit 294.

25 (Whereupon, the document referred to

1 as TBF Exhibit No 294 was marked for
2 identification.)

3 WITNESS: 294, Your Honor?

4 JUDGE CHACHKIN: Yes.

5 WITNESS: I didn't hear, is it the August 8 letter
6 you want me to read?

7 BY MR. HOLT:

8 Q You have that document before you that's been marked
9 as TBF --

10 A I have what's been marked for identification as TBF
11 294.

12 Q Okay. Now, would you take a moment to review.
13 First of all, if you would, turn to page 3 of the document.
14 Is that your signature above --

15 A It is.

16 Q Lewis I. Cohen?

17 A It is.

18 Q If you take a minute to review this letter,

19 A Now when you say the letter, you're talking about
20 the letter that's three pages long?

21 Q Simply the letter, yes, sir.

22 A Okay. I've read it

23 Q If I could direct your attention back to the
24 November 9, 1990 invoice found at page fifteen of TBF Exhibit
25 292, I want you to keep the letter handy while you do that.

1 A Okay.

2 Q You were responsible for preparing this November 9,
3 1990 invoice, were you not?

4 A The November 9 invoice?

5 Q Correct.

6 A I was.

7 Q And, is this the letter of August referenced, is TBF
8 Exhibit 294 for identification the same letter of August 8
9 referenced in the November 9, 1990 invoice?

10 A I don't know that as a fact. It appears that it is,
11 but I can't state that with certainty. I mean, I don't know.
12 I mean it says August 8 and this is August 8, so I would guess
13 so. But I'm not going to testify with certainty that that's
14 the case. Because I don't know.

15 Q Could you tell me which portions of the August 8,
16 1990 letter relate to the construction or operation of the
17 unbuilt low power construction permits held by Raystay at that
18 time?

19 A Can I hear that question again?

20 Q Could you tell me which portions of the August 8,
21 1990 letter relate to the construction or operation of
22 Raystay's unbuilt low power construction permits?

23 A Which portion of the letter?

24 Q Which, if any, portion of the letter?

25 A I see, I just want to make sure I understood your

1 question. I, I can't answer your question because it seems to
2 me the whole letter relates to the project. And the project
3 was what was required to get the applications granted and then
4 how it would be effectuated. And I can't, I can't cut, divide
5 that up.

6 Q So, in your opinion the whole letter relates to the
7 compliance program matter which was an aspect of const, of
8 operating the low power construction permits, is that right?

9 A That's not what I said, Mr. Holt.

10 MR. BECHTEL: If it pleases the Court, I think that
11 question, as previously phrased and again repeated here talks
12 about operation of the station. Did you mean that, or did you
13 mean preparing the station to commence operation?

14 BY MR. HOLT:

15 Q Steps necessary towards placing the stations in
16 operation --

17 A Well, I, we got diverted here by the, by, by the
18 objection, so I've lost the question. So I have to hear the
19 question again.

20 Q Does all or any portion of the letter that you have
21 before you dated August 8, 1990, relate to placing the unbuilt
22 low power construction permits in operation?

23 A In my view, Mr. Holt, you have to look at, you have
24 to look at the, this letter, this August 8 letter as part of
25 the process which began when the showing was filed with the

1 Commission. This is an implement. This was part of that.
2 This was what we said we were going to do and we had to do it.
3 And it's one ball of wax and I can't separate it out and cut
4 it up in parts and divvie it up.

5 Q So, so your answer, your answer is yes? Either all
6 or part of this letter relates to the operations, the
7 construction and operation, when I use that phrase, I'm saying
8 towards placing the stations in operation.

9 A The, the low power, the five LPTV stations in
10 operation?

11 Q Yes.

12 A Yes. They all, it relates to the, it relates to the
13 representations made when the showing was filed with the
14 Commission.

15 Q And do you recall discussing this letter at any time
16 with Mr. Berfield with respect to, on the subject of whether
17 or not it related to the construction or operation of the low
18 power television station?

19 A I cannot recall.

20 Q You don't recall reviewing this letter with Mr.
21 Berfield at the time that you reviewed the invoices?

22 MR. BECHTEL: Objection, asked and answered.

23 WITNESS: When I say I can't recall, that doesn't, I
24 mean, I may have done it or I may not have done it. I cannot
25 recall.